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February 14, 2020

Hon. George B. Daniels  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1310  
New York, NY 10007

Re: *Make the Road New York, et al. v. Kenneth Cuccinelli, et al.*, No. 19-cv-7993 (GBD) (“MRNY”); *State of New York, et al. v. U.S. Dep’t of Homeland Security, et al.*, 19-cv-7777 (GBD) (“*State of New York*”)

Dear Judge Daniels:

Plaintiffs in the above-captioned matters respectfully submit this letter motion to request consolidation of the two actions for pre-trial purposes.

The two cases meet the standard for consolidation under Rule 42(a). Both cases involve many common questions of law and fact, including (i) both cases name the same defendants and challenge the same course of conduct, (ii) the cases have considerable factual overlap, particularly because they challenge the same government action, and (iii) both cases assert violations of the Fifth Amendment of the United States Constitution and the Administrative Procedure Act. This is a sufficient basis to order consolidation, and coordination at this stage is appropriate. *See, e.g., Blackmoss Investments, Inc. v. ACA Capital Holdings, Inc.*, 252 F.R.D. 188, 190 (S.D.N.Y. 2008) (“consolidation is appropriate where actions before the Court involve common questions of law or fact”).

Coordination will conserve substantial time and resources for the Court and the parties. *See Johnson v. Celotex Corp.*, 899 F.2d 1281, 1285 (2d Cir. 1990). If consolidation is permitted, plaintiffs would propose, in most instances, submitting joint memoranda of law. Plaintiffs would anticipate submitting a single memorandum in response to defendants’ motion to dismiss; however, given that the two cases raise some materially different issues, particularly with respect to standing, plaintiffs anticipate seeking leave to extend the number of pages allocated to their joint briefing. Plaintiffs also anticipate filing joint memoranda in support of their anticipated discovery motions and motion for summary judgment. Plaintiffs would reserve the right to make individual submissions or advance separate arguments as appropriate. Plaintiffs would also

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reserve the right to seek to amend the complaints and to add additional parties in each of their actions.

The parties have conferred and defendants do not oppose the motion. Consolidation at this stage will not cause any delay in trial proceedings. *Firemen's Ins. Co. v. Keating*, 753 F. Supp. 1137, 1141 (S.D.N.Y. 1990) (consolidating cases where there was “no showing that delay, confusion or prejudice would result from the requested consolidation”).

In light of the foregoing, plaintiffs respectfully request that their unopposed motion for consolidation be granted.

Respectfully submitted,

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cc: All Counsel of record via ECF